

Housing Institute June 2012
County of Los Angeles Department of Mental Health

Establishing House Rules That Comply with the Law and Benefit Your Program

Presenter: Kim Savage
Law Office of Kim Savage
(562) 930-1113

Housing Options for People with Disabilities

- State licensed facilities
 - Community Care Facility (ARF, Social Rehab)
 - Alcohol and Drug Program (ADP)
- Emergency shelters
- Sober living homes
- Transitional Housing including TAYs
- Permanent Supportive Housing
- Hybrids – shelter/transitional housing
- Others

Housing Program Distinctions

- Emergency shelters – RULES but no lease
- Transitional Housing – lease agreement + rules
 - "use of a program unit in a structured living environment which is conditioned upon compliance with the transitional housing program rules and regulations"
 - California Health and Safety 50582 (g)(2)
 - federal law does not compel participation but only limits to 2 years
42 USC §11384
 - conflict of state and fed law re rules
- Hybrids - like a shelter but assigned space & other indicia of tenancy

Sober Living Homes

- Housing but no services are provided
- Landlord-tenant laws apply
- The living arrangement is protected under fair housing laws
- The residents are protected by fair housing laws provided they are not using illegal controlled substances
- Rules and more rules
- Cannot toss someone out because he or she starts drinking

Permanent Supportive Housing

- Requires individual lease agreements
- Can live there forever
- Landlord-tenant laws apply
- Participation in programs/receipt of services is voluntary – cannot be compelled
- Program rules for independent housing
- Clearly defined under state law
- Not subject to state licensing

Asserted Justifications for House Rules

- People with (mental or developmental) disabilities need more restrictions in housing (safety and conduct assertions)
- Form lease/rental agreements do not include all of the provisions the landlord wants to impose on tenants
- Housing programs permit the provider to require more of residents – “bundling” of housing + services
- In transitional housing, programs are permitted to compel some level of program participation and this requires stronger rules directed at behavior
- TAY housing program participants need more structure and restrictions because of risky behavior of young adults

Restrictive Program Rules

- May lead to assertion that housing should be licensed by the State
- Rule is unenforceable because not a “material term” of the lease
- May violate privacy rights
- May violate civil rights
- Rule conflicts with municipal laws because more restrictive
- May not be considered part of the lease/rental agreement

Basics of Lease/Rental Agreements

Written Agreements

- Names of parties to the agreement (landlord and all tenants listed)
- Address and unit number
- Rent – amount, when due, to whom paid, where to pay
- Security deposit terms
- Late and returned check provisions
- Utilities – who pays
- Any provisions re condition of premises
- Subletting
- Inspections
- Attorneys' Fees provisions if litigation

Oral Lease/Rental Agreement

- Name, address and telephone number of manager of rental property and owner who is authorized to receive legal notices for owner
- Name, address and telephone number of person/entity to whom payment must be made.
- Form in which rent payments must be made.
- If oral agreement, tenant entitled to receive this in writing from within 15 days (on annual basis)

Prohibited Lease/Rental Agreement Provisions

These provisions are void against public policy (unenforceable under state landlord-tenant laws):

- Waiver of procedural protections during litigation (unlawful detainer actions)
- Waiver of protections of warranty of habitability
- Waiver of the right to withhold rent if repairs are needed
- Waiver of right to sue landlord for future injuries
- Waiver of rights related to security deposits

Lease/Rental Agreement Provisions Prohibited Under Fair Housing & Other Civil Rights Laws

- Any additional requirements added to the agreements based on disability:
 - May be intentional (obvious from the reading)
 - May have a disparate impact
- Singling out and treating tenants with disabilities differently under the agreement
- Restrictions against families with children
- Steering to specific units or floors of building

House Rules - Purpose and Goal

- Further the program's specific goals or mission
- Support a healthy & safe environment for residents, visitors and staff
- Create an environment that is respectful of the quiet enjoyment & privacy rights of others
- Respect and safeguard property of all
- Further independent living environment
- Operate well in the neighborhood

Program Rule Basics

- Must be related to the tenancy
- Less is more
- Clear and simple language
- Specific language – avoid vague terms
- If you can't enforce it, don't put it in
- Must comply with:
 - California landlord-tenant
 - fair housing laws
 - Any applicable federal, state and municipal laws

Program Rule Basics - Enforceability

- An addendum to the lease agreement
- Signed and dated by the resident
- Referenced in the lease agreement
- Provide written notice of the consequences of violating a program rule (in the lease and rules)
- Changing the program rules – 30-day written notice
- Provide resident with a copy, attached to the lease/rental agreement

What Should Program Rules Address?

- Visitors/guests
- Quiet hours
- Conduct and safety
- Alcohol/drug restrictions in public/common areas
 - Alcohol – use is not illegal/conduct violate
 - Drug use – illegal controlled substances
 - Reasonable Accommodation requirements
- Smoking restrictions
- Use of common areas

House/Program Rules

- Cannot violate the law (landlord-tenant, civil rights laws, state and local ordinances)
- Narrowly drafted to address health & safety of residents, staff and property
- Narrowly drafted to address peaceful functioning of the building
- Clearly written so tenant has ability to comply
- Rules must apply uniformly to all tenants
- Reasonable Accommodation applies to rules

Law Office of Kim Savage
Post Office Box 41580
Long Beach, California 90853

Office: (562) 930-1113
Facsimile: (562) 930-0003
kimsavage@verizon.net